RICO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In the Matter of the Search of

1) Motorola i560 Cellular Telephone
FCC: AZ489FT5844
Serial Number: 364KFY1FF9

FILED
08 APR -1 AM 9:44
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

'08 MJ 0964

I, John Mizusawa, being duly sworn depose and say:

I am a Special Agent with the United States Immigration and Customs Enforcement, and have reason to believe that property or premises known as:

See Attachment A

in the Southern District of California there is now concealed a certain person or property, namely,

See Attachment B

which is: Subject to seizure under Rule 41(b)(1) of the Federal Rules of Criminal Procedure because the property constitutes evidence of the commission of criminal offenses or instrumentalities used in committing criminal offenses. The criminal offenses at issue are violations of: (1) Title 21, United States Code, Section 952 and 960, importation of a controlled substance, and (2) Title 21, United States Code, Sections 841 (a)(1), Possession of a controlled substance with intent to distribute, (3) Title 21 United States Code Section 846, attempt and conspiracy.

The facts support a finding of Probable Cause are as follows:

See Affidavit of John Mizusawa

Continued on the attached sheet and made a part thereof. X Yes __ No

John Mizusawa
Special Agent, Immigration and Customs Enforcement
United States Department of Homeland Security

Sworn to before me, and subscribed in my presence

APR 0 1 2008 at San Diego, California
Date City and State

ANTHONY J. BATTAGLIA
UNITED STATES MAGISTRATE JUDGE
Name and Title of Judicial Officer

Signature of Judicial Officer

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In the Matter of the Search of
Motorola i560 Cellular Telephone
FCC: AZ489FT5844
Serial Number: 364KFY1FF9

CASE NO. ____________

AFFIDAVIT IN SUPPORT OF APPLICATION

I, John Mizusawa, being duly sworn, hereby depose and say:

I am a special agent (SA) with the Department of Homeland Security's U.S. Immigration and Customs Enforcement (ICE) having been so employed since October 21, 2002. I am currently assigned to the Resident Agent in Charge, San Ysidro Office. Prior to my current employment I served as a Customs Inspector for four years working at both the Honolulu Port of Entry in the State of Hawaii and the San Ysidro Port of Entry in the State of California. I graduated from Customs Basic Inspector School at the Federal Law Enforcement Training Center (FLETC) in December of 1998. As a Customs Inspector in San Ysidro, California I have conducted numerous searches on vehicles and discovered concealed narcotics. I am a graduate of the University of Hawaii where I received a Bachelor of Arts degree in Justice Administration. I am also a graduate of the FLETC Criminal Investigator's Training Program and the United States Customs Basic Enforcement School (CBES), in Glynco, Georgia. Since entering the field as an ICE S/A, I have conducted criminal investigations of or relating to narcotics smuggling. I have received specific training in the area of narcotics investigations, and I have training and experience in the methods used by narcotics traffickers to import and distribute drugs. I am presently assigned to Operation Alliance, a Border Drug Enforcement Task Force in San Ysidro, California, and my duties include investigating the illicit trafficking of controlled substances into the United States of America. I am cross-designated by the United States Drug Enforcement Administration to conduct narcotics investigations and enforce the provisions of the Federal Controlled Substance Act, pursuant to Title 21, United States Code.

This statement is made in support of an application for a search warrant to search a cellular telephone that is believed to contain evidence of violations of Title 21, United States Code, Sections 952 and 960, importation of a controlled substance, Title 21, United States Code, Sections 841 (a)(1), possession of a controlled substance with intent to distribute, and Title 21 United States Code Section

846, attempt and conspiracy.

This affidavit does not contain all of the information known to Agents regarding this investigation, but rather, contains only those facts believed to be necessary to establish probable cause.

ITEM TO BE SEARCHED

The items to be searched are further described as follows:

a. Item #1: Motorola i560 cellular telephone. This telephone is identified by AZ489FT5844, serial number 364KFY1FF9. The cellular telephone is presently in the custody ICE Seized Property Specialist Jobert Mata.

ITEMS TO BE SEIZED

The items to be seized are evidence of violations of Title 21, United States Code, Sections 952 and 960, importation of a controlled substance, Title 21, United States Code, Sections 841 (a)(1), possession of a controlled substance with intent to distribute, and Title 21 United States Code Section 846, attempt and conspiracy. I request to seize any and all electronically stored information found subsequent to the search of the property listed in Attachment A, including telephone numbers of incoming and outgoing calls stored in the call registry, telephone numbers and corresponding names to those numbers in the cellular telephone's address book, any incoming and outgoing text messages related to controlled substances or narcotics smuggling, and/or stored photographic images related to controlled substances or narcotics smuggling, and telephone subscriber information. The Motorola i560 cellular phone was discovered in the proximity of ESPINOZA.

PROBABLE CAUSE

Based upon my training and experience as a Special Agent, consultations with other Special Agents and law enforcement officers experienced in drug trafficking investigations and all the facts and opinions set forth in this affidavit, I know the following:

a. Drug traffickers will use digital and cellular phones because they are mobile they have instant access to phone calls and voice messages;

b. Drug traffickers believe that cellular phones provide greater insulation and protection against court ordered wiretaps and they believe in the inability of law enforcement personnel to simultaneously track the originating and destination phone numbers of calls placed to and from their digital and cellular phones.

On October 30, 2007 at approximately 9:05 AM, Julio Lino ESPINOZA-De Leon entered the United States from the Republic of Mexico at the Otay Mesa Port of Entry, Otay Mesa California in a 1997 Volkswagon Hatchback bearing Republic of Mexico, Baja California license plates AHV4400.

During primary inspection at lane 10, U.S. Customs and Border Protection (CBP) Officer E. Gonzalez came in contact with the vehicle and the driver. CBP Officer Gonzalez identified the driver as Julio Lino ESPINOZA De Leon utilizing a valid DSP-150 card.

CBP Officer Gonzalez received a negative Customs declaration from ESPINOZA and then asked ESPINOZA if he owned the vehicle, and ESPINOZA replied, "yes". CBP Officer Gonzalez requested that ESPINOZA hand him the keys, and ESPINOZA complied and extended his arms in an attempt to hand the keys to CBP Officer Gonzalez. CBP Officer Gonzalez then inquired about his destination and observed that ESPINOZA's hand that held the keys began to shake and his eyes wandered. CBP Officer Gonzalez then attempted to make eye contact with ESPINOZA and asked ESPINOZA a second time about his destination. ESPINOZA replied with hesitation stating, "La Bodega" which translates to the warehouse. CBP Officer Gonzalez began inspecting the vehicle by lifting the rear passenger's side seat and observed fresh paint and weld marks. CBP Officer Gonzalez inspected the undercarriage and observed a non-factory compartment. Thereafter, CBP Canine Enforcement Officer (CEO) K. Lawson and his Narcotics Detector and Human Detector Dog (ND/HDD), "Henry," (CF-26) responded to a radio call concerning a narcotics-laden vehicle at lane 10. CBP CEO Lawson screened the vehicle from the passenger side with his NDD. On the initial pass, "Henry" alerted to the odor of narcotics emanating from the rear passenger side quarter panel and responded by sitting.

At secondary inspection area, CBP Officer C. Navarro conducted a 7-point inspection of the vehicle and observed packages through a drain plug concealed in a non-factory compartment below the rear seat. A randomly selected package was probed and a crystal like substance was discovered in the packages. This crystal-like substance field-tested positive for methamphetamines. A total of 8 containers were removed from the compartment with an aggregate weight of 11.28 KGS.

On October 30, 2007 at approximately 10:34 AM., U.S. Immigration and Customs Enforcement (ICE) Special Agent (SA) J. Mizusawa, and ICE SA A. Sanchez contacted ESPINOZA, the driver of the vehicle. SA Mizusawa advised ESPINOZA of his constitutional rights per Miranda utilizing ICE SA Sanchez as a Spanish interpreter. ESPINOZA denied any knowledge of the methamphetamines discovered in his vehicle. During the interview ESPINOZA claimed ownership of the Motorola i560 Cellular Telephone.

Based on the facts contained in this affidavit and my experience and training, I believe that there is probable cause to believe that the above mentioned cellular telephone contain evidence of violations of Title 21, United States Code, Sections 952 and 960, importation of a controlled substance, Title 21, United States Code, Sections 841 (a)(1), possession of a controlled substance with intent to distribute, and Title 21 United States Code Section 846, attempt and conspiracy.

JOHN MIZUSAWA
SPECIAL AGENT, ICE

Sworn to and subscribed to before me
This 1st day of April, 2008.

Judge's Name
UNITED STATES MAGISTRATE JUDGE